



COMMUNITY  
DEVELOPMENT (925) 673-7340  
ENGINEERING (925) 363-7433

6000 HERITAGE TRAIL • CLAYTON, CALIFORNIA 94517-1250  
TELEPHONE (925) 673-7300 FAX (925) 672-4917

*City Council*  
DAVID T. SHUEY, MAYOR  
HOWARD GELLER, VICE MAYOR  
JIM DIAZ  
KEITH HAYDON  
JULIE K. PIERCE

July 10, 2015

Via Email to: [mrp.reissuance@waterboards.ca.gov](mailto:mrp.reissuance@waterboards.ca.gov)

Bruce Wolfe, Executive Officer  
California Regional Water Quality Control Board  
San Francisco Bay Region  
1515 Clay Street  
Oakland, CA 94612

**Subject: Opposition to the Tentative Order Reissuing the Municipal Regional Stormwater Permit (MRP 2.0) and Comments for modifications**

Dear Mr. Wolfe and Members of the Board:

Thank you for the opportunity to comment on the Tentative Order Reissuing the Municipal Regional Stormwater Permit (MRP 2.0.) The City of Clayton continues to support the Water Board's vision of reducing stormwater pollution and protecting our local creeks, the Delta, and San Francisco Bay.

For the past two years, representatives from Contra Costa municipalities, along with a consortium of Bay Area agencies and BASMAA, have been engaged in an ongoing dialogue with your staff regarding: 1. experience gained and lessons learned from the current MRP; 2. how to apply that experience toward maximizing the effectiveness of MRP 2.0; and 3. ensuring the requirements contained in MRP 2.0 provide a clear path to compliance.

This conversation generated many new ideas and approaches that build upon experience gained and identify how to expand upon and enhance our stormwater pollution prevention efforts. It also advocated consolidating or eliminating "less beneficial tasks" in the Permit, extending implementation dates, reducing reporting, and adjusting ongoing tasks to minimize effort while maintaining effectiveness in protecting water quality.

This approach acknowledges the reality that new or additional funding sources required to implement the new and expanded requirements contained in MRP 2.0 have yet to be identified; and, advocates allocating limited resources in ways that would focus upon, and maximize effectiveness of the major new and expanded mandates.

Despite this extensive effort, few of these ideas were carried forward into MRP 2.0. Such a disappointment of democracy! Therefore, **the City of Clayton must oppose MRP 2.0 as it is currently drafted.** We request your Board consider our following comments and then direct Water Board staff to work with permittees to revise the Tentative Order.

#### **A. Major New and Expanded Mandates Should Be Offset by Eliminating Less Beneficial Tasks**

There are numerous new elements in the proposed MRP 2.0 that will require additional staff resources and local funds. The City of Clayton does not have additional staffing or funds; rather, it is projected by FY 2016/17 we will no longer have sufficient stormwater funds to complete all the current tasks, let alone the new items. Therefore, we ask the MRP 2.0 be adjusted so there is a focus and priority on the most important tasks and items that provide the best outcomes for the limited availability of local staff and funds.

The attached table summarizes adjustments that have been presented to the Water Board staff that would improve program efficiencies or eliminate certain less beneficial tasks. Comprehensive information and rationale has been presented to support these requests to Water Board staff in various meetings and correspondence from BASMA and the Contra Costa Clean Water Program. Inclusion of these changes in the MRP 2.0 will allow permittees to focus and apply our limited resources to the major new and expanded mandates, in order to achieve the greatest positive impact.

Please have your staff review the attached Table and work with permittee representatives to make most or all of the recommended adjustments to “less beneficial tasks.”

#### **B. General Comments**

Additional efforts are needed by most all cities to continue to implement the Trash Reduction requirements. These efforts have just commenced and going forward will undoubtedly consume more staff resources and funds. In addition to the ramp-up of the Trash Reduction implementation, two (2) new requirements will push the need for more staffing and funds: Green Infrastructure, and PCB Reduction. The City of Clayton asks for prioritization, as suggested below. There is not an ability to achieve all

the proposed requirements in the time frames identified with the lack of new funds or staffing.

- See the attached Table for comments on the recommended adjustments to “less beneficial tasks.”
- The Green Infrastructure and PCB plans need to be moved in their start and implementation to later time periods so that cities can continue to focus on the Trash Reduction implementation.
- Various reports/studies submittals should be filed with the Annual Report submittal, not at separate times.
- A Water Board hosted web based (cloud) annual report format and upload would allow for efficiencies in submittal and review, entering the digital age similar to other state agency departments that require annual report submittals by cities.
- We appreciate that the special project reports are done annually as part of the Annual Report submittal and not separate. This streamlined approach should be used for the other various report submittals that are currently identified in the MRP 2.0 proposed language to occur at different times.

The City of Clayton has further concerns regarding the Green Infrastructure Requirement, PCB Reduction Plan and Trash Management Plan for private property and the Annual Report format process itself. Below are expanded comments and suggestions:

### **C. Green Infrastructure**

The draft Tentative Order includes a new unfunded mandate to develop Green Infrastructure Plans. This coordinated, multi-year effort represents a significant paradigm shift toward developing comprehensive long range plans that purportedly will significantly reduce the amounts of urban runoff pollutants, including the pollutants of concern, flowing into receiving waters. MRP 2.0 requires permittees develop a framework for the development of one’s Green Infrastructure Plan and have it approved by its governing body, mayor, city manager, or county manager within twelve (12) months. This timeline is unrealistic in regards to actual local governmental time frames and related budget processes which include notices and public meetings, etc.

The creation of both a framework and plan will also require the City of Clayton to contract with outside engineering services, since we contract for this public service and do not have in-house credentialed staff to undertake such efforts, nor even the funds to hire such! Additionally, the proposed MRP 2.0 assumes that current infrastructure will

need replacing in the future. The City of Clayton's curbs, gutters and sidewalks are already set at ultimate location and no widening is planned in the future -- the public rights-of-ways are fully built out. Further, with routine maintenance curbs, gutters and sidewalks easily last 100 years. Most all of Clayton's sidewalks and curbs were installed in the 1980s and therefore are expected to last another 75 years or more. Please note there are many sidewalks in the Bay Area that were installed in the 1920s and remain in fine shape. Consequently, the proposed plan suggests a city rip out perfectly good infrastructure, often paid by taxpayers, before the end of its useful life! Plus, in Clayton there is insufficient infrastructure improvement projects planned in the MRP 2.0 cycle that would replace such infrastructure in the future.

The City of Clayton strongly urges the following suggestions for the MRP 2.0 Green Infrastructure:

- The Green Infrastructure Section needs to be modified to include an exception to account for cities that will not have any widening of streets or replacement of curbs, gutters, sidewalks.
- The time frame for submitting a Green Infrastructure framework needs to be altered for submittal with the Annual Report filing in September 2018, and the Green Infrastructure Plan filed with the Annual Report in September 2019.

#### **D. PCB Management Plan**

The draft Tentative Order proposes that permittees plan and implement a program to manage PCB-containing materials in non-wood frame commercial and industrial structures constructed or remodeled between 1950 and 1980 at the time those structures are demolished.

The City of Clayton does not have any such buildings; however the Permit language indicates the countywide PCB amounts could be allocated per capita if there is not mutual agreement on another allocation method. This prospect offers no safe harbor compliance by the City of Clayton should a countywide allocation mutual agreement be unattained. The default provision in the MRP 2.0 (Section 12.a.11.4) permit would mandate an allocation of PCB to Clayton and Clayton must then prepare a reduction plan for materials/structures that under the language of the proposed permit do not exist in the City?

The need to address PCB should be handled as the Bay Area Air Quality Management District Board (Air Board) has done with asbestos and lead. State regulations or the Air District require certain permits of any proposed demolition to ensure the materials are being properly disposed. The applicant provides the estimated amount of materials to be removed and how and where to be removed. The Air District collects fees for their permits to cover review and staff time, etc. The issued permits are then submitted to

the local building permitting authority as part of the application to demolish. Local building departments are not equipped to identify and monitor such aspects of PCB. Furthermore, many city data bases do not exist before the 1970s; prior period information must be culled through research of old paper or microfiche records, field research, and/or interviews with staff or community and construction contractors. The time frame stipulated in the proposed Permit provides only four (4) months to create such a plan? This is not a reasonably adequate time frame for achievement.

- Develop a PCB permit process at the Water Board or State level that would be similar to the Air Board process for quantification and abatement of PCB for demolition of structures.
- Eliminate the per capita allocation default mechanism for PCB Reduction for individual permittees that would otherwise not have any structures subject to PCB language on C12. There should be exception path for compliance for individual permittees that would not individually be subject to a PCB Reduction plan if there is no agreeable countywide mutual allocation method. (Provide a “safe harbor” from per capita allocation for those permittees that do not have structures subject to the PCB proposed regulation)
- Modify the time frame for PCB Reduction Plan related to demolitions to be submitted no sooner than with the Annual Report in September 2019.

#### **E. Trash Management Plan**

Much effort and focus by permittees centered on Trash Reduction Plans and locals have just recently started more implementation. In City of Clayton, we have only had 18 months experience with our 25 full capture devices and it has been a drought since they were installed. We have found that it costs about \$200 per device to clean and document maintenance in-house, including using a digital camera to record findings, upload to a server system, and place field coordinate onto maps (this is with Clayton’s use of one two-person crew and one truck). An outside contractor provided an estimate to perform this same work for us, at a cost of \$900-\$1,000 per device.

At this time Clayton is trying to sustain this work in-house, however, due to other pressing workload items and staff reductions [surprise! Clayton cannot afford a maintenance crew solely dedicated to stormwater tasks within current funds], we may need to hire an outside contractor, at further expense without additional funds! Since actual rainy weather experiences have not really occurred due to the extended drought, we are concerned the proposed Permit gives preference to such devices in the future when its true operational and maintenance costs are yet to be fully understood by cities. The Permit language needs to have greater flexibility allowing for alternative measures

that are also not onerous in reporting requirements which divert staff time from working on other important Permit requirements.

The Permit language proposes mandated mapping of drainage on private property that drains into or connects into city storm drains (Section C.10.a.ii.b). Most cities have older sections and even newer areas where we do not have such mapping, maps may be on varying forms of microfiche, or even non-existent. There are no comprehensive digital drainage maps for private and public connections. If the intent is to ensure that private property generators of high or moderate trash are managing its trash, then the Permit needs to allow the cities to ensure the property is managing its trash through sweeping, clean ups and/or other devices such as trash capture. As written, the Permit requires local staff to attempt mapping by use of dye tests and contract with specialized survey companies in cases where such maps do not exist. This proposition is a very time consuming and expensive process. The language needs to be modified to achieve the goal of ensuring that real properties which connect to or drain into stormwater infrastructure have appropriate trash reduction techniques in use.

The Permit as written is also unclear as to Section C.10 (f) vi., wherein it discusses the need for receiving-water observations. It does not provide clarity on how many and where receiving-water observations are done. Is it the intent to be at each outfall even if there are full trash capture devices installed up pipe? The Permit language also suggests a need to inspect the upland areas of a full trash capture device to ensure the base line has not worsened. Our understanding is that a full trash capture device would take litter upland in the drainage area from any color to a green color, thus the need for ongoing upland visual assessment and monitoring is not needed.

- Require private real property owners in high-trash and moderate-trash areas to install full trash capture devices or implement equivalent measures.
- Clarify where and how frequent are the receiving-water observations, i.e. so many outfalls prior to the rainy season? And submit information with the annual report.
- Eliminate need for upland drainage area visual assessment for those drainage areas that have installed full trash capture devices. The only annual report information should be on the devices and target only devices that were not found to be properly functioning.

#### **F. Permittees Must Have a Clear Path to Compliance**

Considerable time and effort has been expended discussing how to reduce levels of pollutants of concern flowing into our waterways, particularly PCBs. Failure to achieve the reductions specified in MRP 2.0 could result in our particular City being held in

noncompliance. However, as drafted, MRP 2.0 provides no clear path for permittees to avoid noncompliance. Some examples include:

- The draft Tentative Order mandates achieving specified reductions in the total quantity of PCBs discharged from municipal storm drains. A major means of achieving these reductions is through removal of PCBs during building demolitions. However this Order fails to acknowledge that permittees have no control over the timing of when real properties redevelop.
  - ▶ *We ask that development of a program to control PCBs during building demolitions should represent compliance with this requirement, rather than applying controls to a specified number of buildings demolished. Also, request a path for compliance for those cities (permittees) that do not have structures subject to the Permit requirements.*
- The Tentative Order includes (in the Fact Sheet) an incomplete method to achieve stipulated reduction credits for each building demolished with PCB controls, for each redeveloped site with new bio-retention facilities, and for finding and abating concentrated sources of PCBs. Looking for hidden PCB sources is a good idea, but permittees cannot guarantee it will find them and be able to abate them.
  - ▶ *We ask that development of a program to systematically identify and review potential sources, and refer them to appropriate agencies for abatement, become the basis for credit toward compliance.*
- The draft Tentative Order allows only four (4) months after Permit adoption for permittees to submit a more complete “measurement and estimation methodology and rationale” for stipulating PCB reduction credits.
  - ▶ *We ask that BASMAA’s PCBs programs accounting methodology be finalized, incorporated into the Permit, and then used to calculate PCBs load reductions during permittee annual reporting.*
- Water Board staff has stated the threat of noncompliance is intended to strongly encourage permittees to find and abate hidden PCBs, and that Water Board staff would use “enforcement discretion” if and when permittees are unable to meet the mandated PCB load reductions. From a municipal government perspective, new financial and staffing commitments must be based on mutually-agreeable goals and objectives, and have well-defined metrics for measuring progress.
  - ▶ *We ask that the load reduction performance criteria not be the point of compliance, and that Water Board staff work with permittee representatives to revise the Draft Tentative Order so that it provides a clear and feasible pathway for permittees to attain compliance. Most factors that are key to meeting the load reduction performance criteria are uncertain and many are not within permittee control (e.g., extent of source properties that will be*

*found, building demolition rates, and redevelopment rates), making achievement of compliance uncertain.*

### **Summary**

From a broader public policy comparative viewpoint, consider it was envisioned that all public agencies shall operate no vehicle or equipment ever older than three (3) years to minimize and reduce pollutant emissions into the air for cleaner air quality, and to maximize fuel efficiencies for reduced greenhouse gas emissions. The reality of this utopian public policy is taxpayer-funded tolerance and payment of local tax revenues and fees to accomplish these objectives are inherently incongruent. Consequently, locally elected public officials are unable to provide such a marvelous public fleet of the latest and greatest vehicles and equipment for the cleanest of air. It would also be a terrible waste of taxpayers' resources to attrition a fleet every 3 years.

Our consideration of the unfunded clean water mandates contained in proposed MRP 2.0 is not dissimilar.

The City of Clayton appreciates the efforts by Water Board staff to develop Permit requirements that are implementable and effective in improving surface water quality – a goal which we share. But just as a household must live within its means, so must cities in the collective pursuit of cleaner water. We look forward to resolution of the remaining issues and the implementation of a reasonable MRP 2.0.

Sincerely,



David T. Shuey,  
Mayor

Attachment – Table



## Requested Adjustments to Improve Efficiency in the Municipal Regional Permit, Including Elimination of “Less Beneficial Tasks”

Provision	Task or Requirement	Requested Adjustments
C.2.f.	Corporation Yard inspection requirements.	Eliminate this requirement, as it duplicates the requirements for inspections already included in the Stormwater Pollution Prevention Plans (SWPPPs) for these same facilities.
C.3.b.i.	Eliminates grandfathering of Regulated Projects with vested tentative maps approved prior to advent of C.3 requirements	Allow municipalities flexibility to require these applicants to implement stormwater treatment requirements only to the extent not in conflict with state law and existing development agreements
C.3.b.ii.(4)	Certain Roads Projects are Regulated Projects under Provision C.3	Delete this requirement as the intent is superseded by the Green Infrastructure requirements in Provision C.3.j.
C.3.b.ii.(1)(c)	Requires projects where 50% or more of existing impervious area is redeveloped to provide treatment for entire area.	Delete this requirement as the intent is superseded by the Green Infrastructure requirements in Provision C.3.j.
C.3.e.ii.	Special Projects—allowance to use non-LID treatment on smart growth development projects that meet specified location and gross density criteria.	To avoid a disincentive for including pedestrian amenities, allow public plazas to be omitted from calculation of project gross density.
C.3.e.v.(1)	Requires Permittees to track Special Projects that have been identified (application submitted) but not approved.	Delete this requirement, as the number of projects, and amount of impervious area, has proven to be small.
C.3.e.v.(2)	Requires Permittees to conduct and document an analysis of the feasibility of LID treatment for Special Projects.	Delete this requirement, as it creates considerable additional effort for applicants and Permittees without any expected water-quality benefit.
C.3.g.vii.	Requires Contra Costa municipalities (through CCCWP) to submit a technical report describing how Contra Costa will implement current Permit hydromodification management requirements.	Delete requirement to submit a technical report. CCCWP submitted a 2013 report on the results of a multi-year monitoring study that concluded current policies and criteria meet these requirements.
C.3.g.iv.	Allows Permittees to propose a different method for sizing hydromodification management facilities that is not biased against Low Impact Development, but requires a Permit amendment before using the method.	Delete requirement for a Permit amendment before the method is used. Note: the Fact Sheet accompanying the Tentative Order states that Water Board Executive Officer approval would be required, not a Permit amendment.
C.3.h.ii.(6)(b)	Requires Permittees to inspect 20% of Regulated	Delete the annual requirement to allow flexibility in scheduling

Provision	Task or Requirement	Requested Adjustments
and (c)	Projects annually, as well as every project at least once every 5 years.	inspections.
C.3.j.i.(1)	Requires each Permittee to prepare and implement a Green Infrastructure Plan (framework for Plan due in 12 months; Plan due in 2019)	Extend the time for submittal of the required framework to a minimum of 20 months.
C.4, C.5, C.6	For inspections of businesses and construction sites, and for response to illicit discharges, requires that corrective actions of "actual or potential non-stormwater discharges" be implemented before the next rain event, but no longer than 10 business days after potential or actual non-stormwater discharges are discovered.	Delete references that specify types of corrective actions and timeframes for implementation, as these create a disincentive for identifying minor problems and create unproductive administrative work.
C.5.e.iii.	Requires Permittees to report a list of mobile cleaners operating in their jurisdiction.	Delete, as this information is unavailable.
C.5.e.iii.	Requires Permittees to report a list and summary of specific outreach events and education conducted to the different types of mobile businesses	Delete and clarify that requirements to inspect mobile businesses and abate discharges is covered by existing requirements elsewhere in Provisions C.4 and C.5.
C.7.a.	Permittees are required to mark and maintain "no dumping" markings on storm drain inlets.	Move this task to Provision C.2.
C.7.b.	Requires Permittees to participate in or contribute to "advertising" campaigns on specified subjects and assess results.	Change "advertising" to "outreach" to make explicit that a variety of methods, including social media, may be used. Delete references to specific subjects. Allow more flexibility.
C.9.c.	Requires Permittees to observe pesticide applications by their contractors.	Delete requirement.
C.10.a.i.a.	Requires Permittees to achieve a 70% load reduction by July 1, 2017	Extend this compliance date to 2018.
C.10.a.ii.b.	Requires Permittees to ensure private properties plumbed directly to municipal storm drains are equipped with full trash capture devices or to verify "low" trash generation rate. Requires Permittees to investigate and map these properties.	Delete the mapping requirement and integrate inspections and enforcement into Provision C.4 (Commercial and Industrial Inspections).
C.10.b.1.a.	Specifies maintenance frequencies for full trash capture devices based on trash generation rates.	Set minimum frequency of 1x/year for all devices, to be adjusted based on maintenance experience. Required maintenance frequency

Provision	Task or Requirement	Requested Adjustments
		is determined mostly by amount of leaf litter and type of device.
C.10.b.1.c.	Requires Permittees to certify that full trash capture systems are maintained to meet standard.	State that systems are maintained, and maintenance program is designed to meet standard.
C.10.b.iv.	Allows a credit of up to 5% toward trash reduction requirement for source control actions such as product bans.	Increase maximum to 20% to fully credit existing product bans and to create incentive for future source control actions.
C.10.e.i.	Creates a formula for crediting trash collected during additional creek and shoreline cleanups toward trash reduction requirement—at a 1:10 ratio, with a 5% maximum credit.	Make the ratio 1:3 and increase maximum credit to 10%.
C.10.e.	Credits on-land cleanups and litter reduction only if visual assessments show a categorical change (e.g., from “very high” to “high” trash)	Allow interim credit for demonstrated actions intended to achieve categorical change.
C.10.a.iii.	Requires bioretention facilities to be equipped with a screen to qualify as full-trash-capture facilities.	Specify that these facilities qualify as full trash capture. Screens could cause flooding.
C.10.b.iv.	Requires observations of creeks and shorelines to determine whether trash control actions have prevented trash from discharging to receiving waters.	Restate purpose of observations, as it is not possible to determine that trash originated from storm drains.
C.10.e.ii.	Provides 1:10 ratio up to 10% maximum credit for actions to reduce direct discharge of trash (e.g. dumping, encampments).	Increase ratio to 1:3, with no maximum, as in some locations this is the predominant source of trash.
C.10.f.ii.	Produce an updated trash generation map each year.	Tie updated maps to compliance dates (for 70% and 100%).